

A SAMPLE LICENSING POLICY FOR YOUR LIBRARY

The following is an example of a draft licensing policy for a fictional library, the ABC Library. This is a very simple policy and is a good starting point. Yours, however, may be more detailed especially after it has been revised a number of times to take into account new licenses to which you have entered.

Licensing Policy for ABC Library

I. Purpose of Policy

The purpose of this policy is to educate ABC Library staff about licensing basics and to provide a consistent procedure for licensing content for the library. It is not intended to act as a substitute for legal advice and proper legal advice should be obtained when necessary.

II. What is a License Agreement?

A license agreement is a written contract between a user and a content owner that sets out the terms and conditions under which a user can use content. As a content owner, you require a license agreement whenever someone else wants to use your content. As a user of content, you need a license agreement whenever you use the content of others. For example, if the library wishes to use a piece of artwork on its Web site, the library must enter into a license agreement with the artist to do so. A license agreement will be necessary for accessing online journals and electronic databases.

III. Basics of License Agreements

As license agreements are legal contracts, it is important to know the basics of contract law. A contract will help to set out the relationship between the parties and can help avoid future conflict. It sets out the rights and obligations of each party.

Contract basics

A valid contract has the following three components:

- An offer to do something or refrain from doing something (for example, to purchase a book or license software);
- Acceptance of the offer;
- Consideration. Consideration is of some value in the eyes of the law. Money is a common example of consideration. However, a promise to perform a service or supply goods is another.

Common clauses in license agreements

It is important to note that license agreements are open to considerable creativity by the parties involved. However, it is important that a license agreement contain the following basic clauses:

- Parties to the contract. A license agreement should state the legal names and address of the parties who are subject to the agreement.
- Purpose of the contract. The purpose of the license agreement should be set forth. For example, to license software, photographs or artwork.
- Rights and obligations of each party. The rights and obligations of each party should

be set out in the license agreement. For example, the artist is to provide the library with a picture on diskette for the library to include on its Web site, while the library must ensure that only library patrons are allowed to view the artwork.

- Usage of content. The license agreement should set forth how content can be used and how long it can be used. For example, a photograph may only be used on the library's Web site for a period of 1 year, or an online journal may be access for 1 year.
- Compensation. This clause sets out how much compensation will be provided to the content owner for use of materials.
- Copyright ownership. The agreement should discuss ownership of copyright. For example, an author retains ownership in software but licenses it to the library for usage.
- Warranties. Warranties in a license agreement set out promises that parties have made. For example, the content owner warrants that he is the owner of the content he is licensing to the library.

The license agreement may have a number of general provisions relating to such things as applicable law, arbitration, etc. The library's lawyer will be of assistance in ensuring that these general provisions protect the interests of the library and comply with any other institutional policies.

IV. How to license content at ABC Library

If you wish to use content that the library does not own, or if another party wishes to use content that the library owns, a license agreement must be negotiated. If you are provided with a license for the use of digital content that seems to be complete and not subject to negotiation, the first question you must ask the supplier of that content is whether *the license is negotiable*. Even if the content owner says that the license is not negotiable, if there are terms and conditions in the license which do not work for the library, try to amend these clauses. Often, even apparently non-negotiable licenses are negotiable.

Before negotiating a license agreement, it is important to first determine whether the library has entered into a similar license agreement. This can be done by looking at the ABC Library Licensing Binder which has categorized all of our agreements by subject area (i.e., Web site, software, journals, periodicals, database, etc.) as well as by name of the publisher/content owner. It is also worth double-checking to ensure the license does not conflict or overlap with existing licenses, including ones to which you are bound through a consortium.

If you find similar content has been licensed in a previous contract, examine the clauses in that other agreement, and find out if any of the clauses were problematic for the parties involved. For example, did the library run into problems with usage restrictions imposed by the content owner that prevented patrons from accessing material? If the similar content was not covered in a previous contract, then look at other agreements in the binder to see if the arrangements between the parties are similar to the type of arrangement you wish to have. Determine how this new situation differs from previous arrangements and if there were any problems in the past that you can avoid.

Write down the basics that you wish to have covered by your new license agreement. Ensure that you speak with the library's lawyer (who may or may not have experience in copyright law), the acquisitions librarian, the budget office and the reference librarian. Before developing any kind of license agreement, it is important to talk to a copyright lawyer (who may or may not be the same person as your library's lawyer.) You can discuss what sorts of clauses did not work in past license agreements and get an idea of how to resolve these problems in the future.

It is important to remember that license agreements will be different and will need to be adapted to meet the changing needs of the library. Before signing a license agreement, review its wording carefully to ensure that you know what it means and consult the library's copyright lawyer to ensure that you are clear on its meaning.